IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8764 of 1989

WITH

SPECIAL CIVIL APPLICATION NO. 8765 OF 1989

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE COMMITTEE

Versus

R N DASS

Appearance:

MS PREETI S PARMAR for Petitioners in both petitions

Ms. S.D.Talati, ASSTT. GOVERNMENT PLEADER for Respondent in both the petitions.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 07/07/2000

ORAL JUDGEMENT

Both these petitions involve an identical question of law and hence they are being disposed of by this common judgment.

2. These two petitions have been filed by the Executive Committee of Surat District Panchayat against the order dated 8.9.1989 whereby the Resolution nos. 11(10) and 11(11) have been suspended permanently under section 294(5) of the Gujarat Panchayats Act (Hereinafter referred to as the Act) issued by the respondent.

3. It is stated that under the provisions of the Act, the District Panchayat is required to constitute an Executive Committee, Social Justice Committee, Education Committee, Production and Corporation Committee, Public Works Committee, Appeal Committee, Finance Review Committee and ot her committees for exercising powers and duties specified in sections 137, 138, 138-A of the Act read with Schedule-III, appended to the Panchayt Rajya Act. A meeting of the petitioner Executive Committee was held pursuant to agenda on 1.10.88 at 15.00 hours in the District Panchayat Committee Hall for the transaction of its business and it passed Resolution nos. 11(7), 11(10) and 11(11). The petitioner Executive Committee passed its resolution to permit the co-operative movement and co-operative adventure of the tribals of Surat District Panchayat in establishing three sugarcane factories, namely Shri Surat Jilla Uttar Purva Vibhag Sahakari Khand Udyog Mandali (proposed) at village Isar, Ta: Mandvi, Dist: Surat; Surat Jilla Dakshin Purva Vibhag Sahakari Khand Udyog Mandali Ltd. (proposed) at Saras, Ta: Olpad of agriculturists to which these co-operative societies are going to help, 81%,78%, 70% respectively are tribals. An amount of Rs. 1,66,00,000/- were subscribed as capital share. These co-operative societies are to set up factory for manufacturing sugar and allied products and they would be utilising the sugarcane that would be grown in the above stated irrigated area. The bye-laws of the co-operative society cover the objects like increasing cultivation of sugarcane, setting up model farms for new varieties of sugarcane, provide the agriculturists with extension service aimed at spreading of improved practices and use of improved and modern inputs i.e. seeds, fertilisers, insecticidies. These co-operative societies are to take help of Navsari unit of the Gujarat Agricultural University. About 10,000 persons would get employment. Surat district has been declared as a backward and Tribal district. The establishment of Sugar factory would help tribal agriculturists for their

economic upliftment and development. There are no sugar factories in Sugar district and sugasrcane has to be sent to factories located in Maharashtra area. The setting up of sugar factories by the above said co-operative socieites would mitigate the hardships and losses. The agriculturists would be able to utilise surplus irrigation potential of Ukai and Kakrapara Irrigation projects.

4. The petitioner appeared before the Development Commissioner and submitted that the resolution passed by it is within the competence, legal, valid and proper and within the powers vested in the District Panchayat under section 137 read with schedule-III, read with section 138(7) read with schedule-III, section 138(2) and 137(3). It was also pointed out to the Development Commissioner that similar actions were taken by the District Panchayat for the help of sick industries and even the Government extended its help to the same. The respondent Development Commissioner passed an order dated 8.9.89 permanently suspending the execution of the resolution Annexure "A".

5. The learned counsel for the petitioner submitted that the resolution Annexure "A" is within its competence, proper, legal and valid and is covered by section 137 read with entry nos. 8-A and 8-B of Schedule-III. The resolution is also covered by section 137 read with entry nos. 6-G, 6H, 6I of Schedule-III. It is also within the powrs of section 138(2) of the Act. The respondent Commissioner misread the provisions of law and came to the erroneous conclusion which is illegal, null and void. Sub-section (5) of section 294 of the Act does not prescribe guidelines in sub-section (6) of section 294. The learned counsel for the petitioner also relied on the decision of this Court delivered in LPA No. 19 of 1990 in Special Civil Application No. 8763 of 1989 decided on 8.9.93.

6. Heard the learned counsel for the parties and perused the relevant record. The learned Assistant Government Pleader for the respondent contended that the order passed by the respondent is perfectly justified, legal and valid one and that is within the competence under the provisions of law. The Panchayat cannot give any assistance to the industrial co-operative societies. It is not prescribed by section 137 of Schedule-III. The sugarcane factory is an industry which is proposed to be estabished by the co-operative society. The help cannot be given for the community development though such help can be made available only for developmental functions.

There is no provision in the Act to help and establish sugarcane factories. The District Panchayat can provide help for the public health, security, education, social or economic or public activities, but no help can be provided to industrial co-operative societies for establishing project report. As such, the resolution passed by the District Panchayat is illegal and that was suspended while exercising powers under section 294(5) of the Act.

7. I have carefully considered the contentions of the learned advocates for the parties and perused the relevant record. The present petitions are in respect of the resolution nos. 11(10) and 11(11). A similar order was passed by the respondent cancelling the resolution of the petitioner by the order dated 8.9.89 in respect of the resolution no.11(7) passed by the District Panchayat. That was suspended by the respondent under the same provisions of section 294(5) of the Act. That order was challenged in this Court in Special Civil Application No. 8763 of 1989. The learned Single Judge dismissed the petition and upheld the order of the respondent against which judgment, an LPA being LPA No. 19 of 1990 was filed. The Division Bench of this Court considered the matter and allowed the LPA by judgment and order dated 8th September, 1993 setting aside the order of the respondent with a direction to the respondent Development Commissioner that he shall consider the matter in light of the provisions quoted in the judgment, after affording an opportunity to the petitioner District Panchayat of being heard in the matter and decide the question under consideration in accordance with law and he was further directed to take up on his hand re-conciliation of the matter within six weeks from the date of receipt of the writ of the judgment and deal with the same and decide the same in accordance with law as expeditiously as possible.

8. The Division Bench has considered that three sugar factories have collected share contribution from the members (1) Surat District South-East Khand Udyog Sahakari Mandli (proposed), Mandvi (2) Surat District South East Khand Udyog Sahakari Mandli (proposed) Ltd., Valod and (3) Kantha Vibhag Khand Udyog Sahakari Mandli (proposed) Olpad.

9. It is the duty of the District Panchayat to promote development of agriculture. The petitioner resolved to promote the aforesaid society for starting sugar factories in the District. The Development Commissioner, while exercising powers under section

294(5) of the Gujarat Panchayats Act, 1961 called upon the petitioner Panchayat to explain as to how it would be lawful for the Panchayat to promote sugar factory as per the aforesaid resolution. The learned advocate contended before him that there is a provision in schedule-III clause (1) pursuant to section 137 of the Act with regard to the agriculture production and implementation of agriculture, development plans. Growing of sugarcane is an agriculture activity and promoting and enforcing such activities within the scope of the duty of the Panchayat (2) pursuant to the provisions contained in section 137(2) of the Act. There is a scope for enhancement of the economic well being of the inheritence of the District and promoting co-operative societies, for production of sugar in the backward areas, economic and social conditions of inhibitants of the said backward areas are likely to improve (3) reasonable rates of sugarcane can be made available (4) by establishing such societies in the backward area and in forests areas, people residing in such areas would get employment and agriculture production of sugarcane would fetch a reasonable price (5) Such societies are formed in the same manner as societies concerning sick industries.

The Division Bench of this Court has held that what the Development Commissioner has done is merely to make orders seeking reference to section 137 read with schedule-III and came to the conclusion that there is no provision for promoting sugar fatories by or at behind of the District Panchayat and establishment of sugar factories and he accordingly, found the resolution passed by the petitioner to be illegal and issued a direction in the form of preventive injunction not to implement the said resolution. The learned advocate appearing for the appellant in the LPA pointed out before the Division Bench that the Development Commissioner has failed to apply his mind to the provisions of section 137 subject to the provisions of this Act, it shall be the duty of each District Panchayat to make in the area within the jurisdiction and so far as the fund at its disposal will allow, reasonable provision in regard to all or any of the matters specified in Schedule III.

10. It was also contended before the Division Bench that the Development Commissioner has misunderstood the promotion of estaboishment of co-operative societies with actual starting of sugsar factories by the District Panchayat. A district Panchayat may also make provisions for carrying out within the district any work or measure which is likely to promote the health, safety, education, comfort, convenience or social or economic or cultural

well-being of the inhabitants of the district.

11. The learned advocate for the petitioner submitted that it is also the duty of the Panchayat to promote idea of co-operation in different fields of life and to organise and encourage co-operative institutions in the economic and social fields and especially to establish and promote the development of multipurpose co-operative societies for industries. Thus, the Panchayat is also required to establish and promote development of multipurpose co-operative societies for industries and agriculture.

12. Considering the facts and circumstances and the submissions of the learned advocates for the parties, I think it proper to remand the matter to the respondent Development Commissioner for re-consideration in light of the provisions of law as stated above.

13. The petitions are accordingly allowed. The impugned orders passed by the respondent Development Commissioner are quashed and set aside. The matter is remanded to the respondent Development Commissioner. He is directed to decide the matter as expeditiously as possible and preferably within a period of four months from the date of the receipt of writ from this Court, in accordance with law and after affording a reasonable opportunity of hearing to both the parties. Rule is made absolute accordingly with no order as to costs.

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